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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF:

CS-29A

November 10, 1994

VIA FACSIMILE
(216) 869-4272

William A. Simon, Jr.
Assistant General Counsel
GenCorp
175 Ghent Road
Fairlawn, Ohio 44333-3300

RECEIVED

NOV 15 1994

SUPERFUND PROGRAM
MANAGEMENT BRANCH

Re: Section 104(e) Request-Stickney/Tyler Landfill
(Dated October 17, 1994)

Dear Bill:

This letter is in response to your letter of November 1, 1994, and our recent conversation with regard to the above-captioned matter.

The 104(e) Information Requests were sent to your client because of certain responses that GenCorp gave to Interrogatories filed in the Dura Landfill litigation. In response to an Interrogatory requesting "all facts and dates relating to the corporate history of the defendant," GenCorp replied:

Without admitting that any of the below named entities are predecessors or successors of GenCorp, or that GenCorp has assumed any of their liabilities or obligations, . . . the following companies have owned the manufacturing plant [located at 3729 Twining Street, Toledo, Ohio]:
Textileather Corporation (prior to 1952 through 1954);
General Tire and Rubber Company (1954 through 1984);
Diversitech General (1984 through 1988); GenCorp (1988 through 1990); Textileather Corporation (1990 to present).

(Emphasis added).

Because of the possible assertion of a successor liability defense as indicated in this Interrogatory response, it was and remains reasonable for U.S. EPA to seek the corporate successor information sought in the October 17th Information Requests. However, during our recent conversation, I indicated that in lieu of written responses to the 104(e)'s, an assumption of liability of GenCorp for the acts of its predecessors and successor would



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suffice. Specifically, the assumption of liability should include or discuss the following:

1. A blanket assumption of liability for the operations at the Twining Street plant for the acts of the first Textileather Corporation, General Tire and Rubber Company, and Diversitech General.

2. If GenCorp is unwilling to assume blanket responsibility for the acts of the first Textileather Corporation at the sites, I will need to know the following information:

The manner in which General Tire and Rubber Company utilized the trade name "Textileather." I.e., was this name printed on the company's products (identify which products), were General Tire's trucks from the Twining Street plant (especially those trucks used for disposal) lettered with the name "Textileather," were any drums disposed of at the Stickney/Tyler sites subsequent to General Tire's purchase of the Twining Street plant lettered as being from "Textileather," did the Twining plant use this name on its stationary, was the Twining Street plant ever operated as Textileather, a subsidiary of General Tire, etc.

Depending on your answer to the above questions, I may need to require further information.

3. Based on your November 1, 1994 letter, I will assume that since you have previously stated that the corporate name change from General Tire and Rubber Company to GenCorp was a name change only, that GenCorp assumed all of General Tire and Rubber Company's liabilities, or as a matter of law, would not be able to deny liability for the possible acts of General Tire and Rubber Company at the Stickney/Tyler sites ("the sites"). If GenCorp, in any way, seeks to limit its liability for the possible acts of General Tire and Rubber Company at the sites, then, to that extent, I will have to insist that GenCorp answer the 104(e)'s. However, your response to the 104(e)'s may wait until I see the manner in which GenCorp might choose to attempt to limit its liability and I thereafter give you additional instructions as to which questions might still need to be answered.

4. The discrepancy between the interrogatory response and what you stated in our recent conversation relative to the relationship between the Twining Street plant and

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Diversitech General needs to be resolved. You indicated in our conversation that Diversitech General had no relationship to the Twining Street plant; the interrogatory response indicates otherwise. If you still assert that there was no relationship, please explain the apparent discrepancy (and provide background documentation). Additionally, if there was no relationship between Diversitech General and the Twining Street plant, based on the interrogatory response, there appears to be a gap from 1984 through 1988 in the corporate history cited. Please explain (or explain away) this apparent gap, and provide any documentation necessary to prove this assertion.

5. If, on the other hand, you now assert that Diversitech General was at one time the owner of the Twining Street plant, and your client will not assume blanket environmental liability for the acts of Diversitech General at the sites, I may need to require answers to all or certain of the Information Requests with regard to the Diversitech General/GenCorp relationship. However, as above, your obligation to answer these Information Requests, if any, can await my examination of the extent to which GenCorp attempts to limit its potential liability in this instance.

6. GenCorp must discuss the extent to which, if at all, that GenCorp assumed the environmental liabilities of the Twining Street plant which had arisen (even if not yet discovered) prior to its sale, and the extent to which any liabilities may now be the responsibility of the second Textileather Corporation. You may, of course, coordinate with Michael O'Callaghan, Textileather's counsel, as to this matter. He has stated to me that GenCorp assumed all pre-sale environmental liabilities of the plant. If GenCorp agrees and will so state this, it will be unnecessary for either GenCorp or Textileather to submit the Textileather Purchase Agreement or contract. If, however, the two of you cannot reach a written consensus as to the extent of liabilities assumed, if any, by GenCorp, the purchase agreement must be submitted by one of you. I assume that you and Mr. O'Callaghan can coordinate this effort.

Bill, I hope that your client will understand that I am in no way trying to "pick on" an entity that has up to this point evidenced cooperation with U.S. EPA. I think that my flexibility in handling GenCorp's concerns with regard to the 104(e) Information Requests should demonstrate this. Please also assure your client that additional, aggressive PRP search efforts are currently underway. However, as you are well aware, the EE/CA signed by your client represents just the first phase of

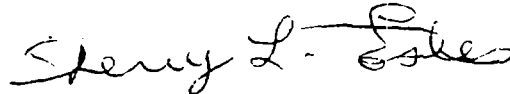
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U.S. EPA's anticipated response actions at the sites. Given that GenCorp's future cooperation at the sites is by no means assured and given the nature of GenCorp's response to the Dura Interrogatory, it was necessary and appropriate for me, as U.S. EPA's enforcement counsel, to issue the Information Requests to your client.

You may call me at (312) 886-7164 to discuss any issues involving the 104(e)'s, the content of this letter, or the nature of GenCorp's response.

Sincerely,

A handwritten signature in cursive script that reads "Sherry L. Estes". The signature is written in dark ink and is positioned above the printed name and title.

Sherry L. Estes
Assistant Regional Counsel

cc: Beth Reiner
Marsha Adams